

THE TRUE
STATE
OF THE
CASE
OF

John Butler, B.D.

A Minister of the True
CHURCH of ENGLAND.

In Answer

To the LIBEL of **Martha** his
sometimes WIFE.

Treating of a Marriage dissolved, and
Made NULL by desertion.

AND

Of a Lawful Concubinage in a CASE of
Necessity: Wherein Lawful Marriage conveniently, or
possibly cannot be obtained.

*Psal. VII. IX. O let the wickedness of the wicked come to an end,
but establish the just: For the righteous God trieth the hearts
and reins.*

*Prov. XXVIII. XIV. Who so robbeth his Father or his Mother.
and saith, it is no transgression; the same is the companion
of a destroyer.*

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TO THE READER.

WO to the World because of Offences (*saith our Saviour*) Mat. 18, 7. But Wo unto him especially, by whom the Offence cometh. *Wo is an harsh word, and bespeaks Misery, and so much the worse out of our Saviour's lips, because his words are never uttered in vain. That I am charged, and that deep and widely, with great offence, hurts me not so far as I am innocent: But wo be to him or her who is guilty, be the clamour most silent. Adultery is a foul crime, and Fornication, a dangerous sin; and both these are laid at my door. And the smart of this slander is so painful and sore upon me, that I feel it wherever I go: For many very good Christians, and holy People mourn for me I find, as if I am so indeed. And two good men my Neighbours and Brethren of the Clergy, supposing me to be so indeed, most kindly befriended me with a Brotherly Reproof; for which as I had great reason, I was very thankful, and returned them thanks in an answer as I thought meet: Unto which I had no reply. But others more barbarously have hugg'd lying reports, and cherishing slanderous clamours, have increased the noise. In the mean time suspecting that there were snakes in the grass, I became patient with dumb silence, and saying to my self, that days would speak, and years would teach Wisdom, Job 32. 7. For tho much was said, and more was thought, much noise, and little musick, loud clamours and small truth: Yet the testimony of my Conscience, concerning the sincerity of my Conversation towards God and man, administered joy and comfort to my Soul, in the midst of my wounded reputation, even as it were at the gates of death, 2 Cor. 1. 12. And yet after more than ten years waiting for a tryal of truth, I found my self rendered a publick shame, both among Clergy and Laity; being wounded at a*

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distance

distance by barking Curs, who keeping out of gun-shot, wounded me in the dark, so as 'twas hard to say who hurt me: While to my face all men seem'd strangers, as if nothing ill had been once thought or spoken against me. Hence was it trumpeted both in City and Countrey to the ruin of my reputation, That I am or was a man deprived and cast out of the ministry and my benefice, for misdemeanors, and that I have two Wives at once; am a whoremaster, a contentious man, a bankrupt, and a beggarly fellow, an enemy to the Government, and abundance of such-like stuff, which was almost every tittle false. The first man who did me the kindness to say thus to my face, was Mr. William Cusle, my fellow prisoner in the common Goal of Northampton. And verily I believe this innocene man spake as he really thought of me, being actuated by my own most disobedient, and rebellious sons, to believe such lies of me. And tho he spake with too much of keenness beyond what became a man of his function; having no proof of what he spake, but out of bare hearsay and common fame: Yet do I freely forgive his slanders. And I do heartily thank him, that he gave me this first occasion to vindicate myself. I have reason to believe, that the ground work of all these slanders, was laid by a more designing head, than that poor man's shoulders were able to bear. No doubt but a Diabolical malice was at bottom of all, and at first contrived and started those false reports, which cherished by my two rebellious sons, whereof one was a profest Roman-Catholick, who by the principles of his religion, was bound to seek all occasions he could imagin, with safety to his own person, to destroy me, as one accused by a papal decree, for an obstinate Heretick; and for that reason, I having disinherited him of his Birth-right, as my eldest son: He became so much the more embittered against me: Insomuch as his mother thereupon deserted my bed, joyning issue with this rebellious and schismatical son of her delight, to divorce her self most obstinately, maliciously, and absolutely from our marriage bed, after we had lived together, much comfortably and happily for above thirty years as man and wife, in holy wedlock. God is my witness how unapt I always was to harbour an ill opinion of this woman, my sometimes, (as I verily thought) loving wife. For tho there was just suspician of her overmuch familiarity with other men, and of her want of love to my self; because of a pilloyning knack she had of private selling my goods, over and above her allowance, by keeping up a private purse; and by a coldness of affection, in case of any difference with her intimates

intimates, or kindred, being always apt to take party against me. But especially for that, when by means of adverse fortunes in the world, I was driven to lurk at some distance in remote places, for about three years space, she never was the woman that gave me one visit, during that kind of restrained exile; no, tho for near ten months of that time I was a close prisoner in the Fleet: And for as many months before that, had not so much as once seen her face; and yet she knew well where I was, and wanted for no conveniency to come at me; and tho I often importuned her by letters, yet she would not regard me; but seemed as if pleased with my absence, and as if at that time she had begun to desert me utterly. And yet after all these things, when the storm of my troubles was over, I came home to her, and abode with her as formerly, as if she had never given me any occasion of Offence. And at length, when she did utterly deny any further duties to me in her marriage bed; yet still I used all possible means to reclaim her, for one whole year and more. until I found her past all hopes of reconciliation: And then I concluded with the Apostle, 1 Cor. 7. 9. That seeing I could no longer contain, it was better to marry again, than to burn. And now it is more than eleven years since she has thus deserted me; and yet now at length she chargeth me with Adultery, or Fornication, or Incontinency, or with all. And yet I thank God for it, who by his grace hath preserved me, that I never had carnal knowledge with any man's wife, before, or since I knew her, And never had a child by any woman but her self, until one year after she utterly left me. And in attestation of these things, and in vindication of my proceedings in the whole matter, I have written this ensuing Treatise, in answer to her Scandalous Libel. And in vindication of the Nullity of our marriage by her desertion of me, and of the lawfulness of an honest Concubinage, in a case of necessity where lawful marriage cannot conveniently, or possibly be enjoyed. Unto which discourse, I refer my readers, as to the malicious rebellions of both my sons, who were the chief incendiaries unto all the Evil their said mother hath acted against me. And yet I have great reason to imagin, that the green heads of these infernally inspired villains, had yet a deeper foundation, than their own unripe pates to build upon. There was among my pretended intimate friends, a certain Divine of the Church of England, as he pretended to be: And might a man of integrity be judged by his hat and gown and girdle, he was so cap-a-pee: Or might a man be distinguished by

by his graceful garb, a smooth tongue, affable discourse, and a courteous presence; he could not be otherwise. But when we approach so near a man as to find an Achitophel's head, Rabshake's lips, and a Doeg's hard heart, all met in the presence of a stubborn Jew: And a church-man's habit upon the body of a secretly resolved Papist; What can a man look for but a Beast out of a bottomless pit, throwing about his firebrands, arrows and death, and saying, Am not I in sport? What can a man expect otherwise but infernally contriv'd mischiefs, which without the gracious help of God above, cannot reasonably be prevented. I have receiv'd this sting at my heart, and these humble Papers are intended as an Antidote against the poison thereof: And the good God grant me his blessing therein according to my Integrity. Let truth and righteousness ever flourish; but let lies and flanders of the ungodly always be detected, and come to nought. And the good Lord of his mercy justify the innocent, and let me ever escape the malicious Plots and Contrivances of the venomous lips of Cham, Ham. And let not the innocent and godly sons of the pure church, who have kept promise, tho' to their hurt, be ensnared to believe the gilded lies of a false brother. Amen.

The

The true

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C A S E

B E T W E E N

J O H N B U T L E R, Clerk,
A N D

Martha, *sometime his Wife, in a Matter of Marriage, dissolved by Desertion. As it is now about to be controverted in the Honourable Court of Arches, by a Libel brought by the said Martha against John, and the Allegation of the said John in Answer thereto, &c.*

The Libel came to the Hands of this Respondent on the tenth Day of June, 1697. and says as follows.

IN Dei nomine, Amen. Coram vobis venerabili & egregio viro Georgio Oxenden, Legum Doctore almae curiae cantuar. de Arcubus London. Officiali principali legitime constituto, strove Surro, aut alio Judice in hac parte competenti quocunque, rs discreta femina Marthæ Butler uxoris Johannis Butler de Hammersmith,

HammerSmith, *in Com. Mid. cler contra & adversus quemcumque alium sive quoscunque alios per viam querelæ ac vobis in hac parte querelando dicit allegat. & in hiis scriptis injure proponit articulatim, prius ut sequitur, viz.*

Imprimis, That the said John Butler Clerk, and Martha Butler, formerly Perkins, Daughter of one Isaac Perkins, being free from all Matrimonial Contracts, were on or about the seventh day of May, which was in the year of our Lord God, 1651 joined together in holy Matrimony, by a Minister in holy Orders in the Parish Church of Weedon, in the County of Northampton, according to the rites and ceremonies of the Church of England; and after such their Marriage, they did live and cohabit together as lawful Man and Wife, and for, and as lawful Man and Wife, they the said John Butler and Martha, were and still are commonly accounted, reputed, and taken to be, and the said Marriage hath been consummated by a carnal copulation, and he the said Joyn Butler hath had several children born on the body of the said Martha his Wife, four of which, (to wit Simon, Alban, Ann-susan, and Barbara) are now living, and were and are commonly counted, and reputed the lawful children of them the said John and Martha Butler his Wife; and the Marriage of the said John and Martha Butler doth appear to be entered into the Register-book kept for Marriages in the Parish Church of Weedon in the County of Northampton aforesaid. Hocquifuit & est verum publicum notorium manifestum pariter a famosum, ponit tamen de quolibet alio temporis spatio major medio vel minori, & ponit conj. & divisim & de quolibet.

Such is her first Article of her Libel. Unto which is answered by this Respondent, That it is not altogether True, being stuffed with several presumptions which cannot be prov'd, nor aptly be discovered.

And first, as to the pretended Marriage, this Respondent saith That it was really his desire that such a marriage might have been effected as in the Libel was pretended; but in the year above mentioned it was a time of Rebellion, and of great disorders both in Church and State, and the lawful way of solemn matrimony, according to the rites and ceremonies of the Church of England, was gainsaid, and utterly forbidden in those days, and forty shillings fine imposed on every Minister as should marry by the Common Prayer Book; and hence lawful Ministers in benefice durst not perform lawful marriage, under the pain of the said forty shillings forfeiture. Wherefore this Respondent

being ill willing to submit unto a schismatical and new invented Form of Matrimony, was constrain'd to make use of a stranger that he never saw before nor since, who was a man out of Benefice, and promised to marry us in due form in the Church, as in the Libel mentioned. And in presence of witnesses did begin to read the form of Marriage; but in the management, whether out of mistake or, ignorance, or wilfulness, this Respondent cannot say; but so it was, That he neglected and utterly omitted to use that most essential part of the Marriage, whereby this Respondent should have been *betrothed to the said Martha the Complainant*. And altho this Respondent did whisper and correct him, by making known his mistake, yet he amended it not, seeming as one confounded and in an amazement, insomuch that the company burst out into a loud laughter. So as he did not take this Respondent by the right Hand, nor cause him to take the said Martha by her right Hand, and to say after him, saying, [I John take thee Martha to my wedded Wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy Ordinance, and thereto I plight thee my troth.] Which passage thus utterly omitted, and at that time not to be amended; Something was said of making us Man and Wife without it. And considering the rudeness of those times, and the difficulty of Marriage to be rightly obtained as the case stood: This Respondent observing that the place was thin of Witnesses, and those who were present not so sufficiently read as to apprehend the deficiency, past over the matter with silence, and did cohabit with the said Martha as his lawful wife; whence followed a common repute, That the said Martha was his wife lawfully married to him, and he had carnal copulation with her as with a wife, and did heartily love her, and owned her as his wife for many years, notwithstanding the defects in the solemnity of his marriage. And did humbly conceive, as those times were managed, That he was as well married by taking a woman into his bed without other ceremony, as if he had been married by the *Directory* then in use, or by the Justices; Forms of marriage utterly illegal, tho countenanced by the Rebellion. And since by the Act of Indemnity in the Reign of King Charles II. this Respondent humbly conceives his deficient marriage is become as legal and good in law, as if it had been most truly solemnised. And he doth heartily consent hereby that she was his lawful wife, and that this Respondent had never denied her, had she not cast off him.

2dly. As to the *Marriage entred in the Register book kept for Marriages at Weedon aforesaid*, as is alleged. This Respondent doth further say, That he hath seen such a pretended marriage entred in the said book, but withal, he utterly denies that it was lawfully and orderly Registered, either by the Minister that pretended to celebrate the Marriage, or by the Minister of that Church, or by the Clerk of the Parish: but was put in by some stealth, or hired to be done many years after: For that about five or six years after the pretended time of marriage, at what time the strange Minister that essayed to marry us was dead, this Respondent did purposely call for the said Register-Book, and did plainly see and find that no such Entrance was made; but afterwards upon a new search, he plainly found that there was such a marriage set down; but then it was so as that it was plainly interlined, and written with a strange hand, diverse from all the rest that were recorded therein.

3dly. As to the Children which were had of the body of the said *Martha* the Complainant; this Respondent doth farther say, That out of his abundant love to the said *Martha* his pretended wife, he never doubted to own at all times the children by her brought forth as his own natural and well-begotten children, and doubts not but that all or most of them which are dead, were lawfully and well born, and likewise that the two surviving daughters were so. And altho there have been suspicious carriages, sufficient to provoke Jealousies, and giving just cause to recriminate the the Libellatrice, and something thereof is mentioned in this Respondent's Allegation put into Court: Yet in this publick Discourse, this Respondent is willingly silent. Only as to the two Sons in the Libel mentioned, called *Simon* and *Alban Butler*; such has been their undutiful, disobedient, most abominably malicious, and Diabolically rebellious carriage towards a pretended Father, that no rational Man can imagine, that truly natural and lawfully born children, can possibly degenerate so far as to be guilty of such monitrous language, and *Infernal actions* as these pretended sons have been guilty of against this Respondent. All neighbours can testify that this Respondent hath done his utmost duty by them, as a tender Father, to spare for no cost to his utmost ability, in contributing to their health and Learning, and all holy nurture in the Lord. The youngest has enjoy'd a fair Portion under him, and might have been settled as heir of all that this Respondent is like to leave behind him, had he not burst out into inhuman rebellions and base ingratitude. The

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eldest had several years in his hands the management of this Respondent's whole estate, and did get, or might have gotten a sufficient portion under him, until first running into intolerable debaucheries, and at last becoming a profest *Roman-Catholic*, he caused himself to be discarded. The younger owes this respondent at this Day 150 *l.* upon Account, and yet pretends by a kind of cheat, that he owes nothing. Both of them have used violence against this their pretended aged Father, have thrown him down by violence in his own house and rifled him; have cheated him, robbed him, slandered, reproached, reviled and upbraided him at a strange rate, in presence of the Complainant *Martha* their Mother, who in many things was their Abettor: They have threatned him with Sword in hand, swaggering over him in strange presumptuous postures: They have used all possible means to impoverish him, ruin him, and to starve him, by abetting enemies to overthrow him, and have occasioned his imprisonment. And at this day by compliance with a Kinsman that has a mortgage upon his inheritance. These sons together with the Complainant their Mother, are very unjustly in possession of the inheritance of this Respondent, who is constrained to sue in Equity, to gain his Bread out of their rapacious teeth, while they use all possible means in these hard times, playing upon his wants, to rob him of all he has, in order by Law to disable him from using a just defence. These humble complaints this poor Respondent hath uttered in the bitterness of his soul; upon the Words of a Priest, and of such a Priest as has kept his Oaths and Promises to his hurt; and God knows, who knows the secrets of all hearts, that he hath uttered no lie. And all who know him do know, and he presumes will testify to the integrity of his reputation. It is written, *Deut. 27. 16. Cursed be he that setteth light by his Father or Mother: It is God Almighty hath said it, and all the world are bound to say, Amen to it.* Is this Respondent Father to these Brats? If so, How much good would their Repentance avail him beyond their ruin? But he leaves them as to that matter, to God the avenger, who knows all things. The same great God has determined it. *Chap. 21. 21. That such wretches are to be Ston'd to death with stones, that all Israel may hear and fear, and that no more such presumption may be done again.* And the Father alone in this case is to be the Witness, But alas! as times go, rude villains find more friends than innocent parents: God save all according to his just vengeance, *Amen.* But what

shall be said? Are these Children ill-born Bastards? God knows! And if so, the fault is elsewhere, rather than with this Respondent. However they are plainly the Devil's Brats, and none of God's children, according to the sense of the Apostle, 1 John, 3. 10, 11, 12. And thus they are Bastards of ungodliness, and the discreet woman their Mother, as the Libel styles her, by taking share in their rebellions, cannot be thought so very faithful as is pretended. And now come we to the 2d. Article, which says,

Item. That about 12, 11, or at least 10 Years since, one Mary Tomkins did live in the House with them the said John and Martha Butler as their Servant, and the said John Butler being unmindful of his conjugal vow, and seduced and instigated by the Devil, did about ten Years since commit the foul crime of Adultery, Fornication, or Incontinency, with the said Mary Tomkins, his said Maid Servant, and it being taken notice of that she was with child by the said John Butler her Master, he the said John Butler and the said Mary Tomkins, went into Holland, or some other parts beyond the Seas, where they lived incontinently together for the space of two years or thereabouts; and the said Mary Tomkins had there a Bastard child born, and begot by the said John Butler, called by the Name of Mary. And for and as the base child begotten by the said John Butler, on the body of the said Mary Tomkins, the said child Mary was and is commonly accounted and reputed, and thereof there was a publick Voice, Fame and Report. Ponit tamen de quolibet alio tempore spatio, &c. & ponit ut supra.

Such is her second Article; whereof her first Charge therein is, That one Mary Tomkins was a servant in the House of this Respondent; which be it true, yet what matters it to her purpose? Except it be to call this Respondent to remembrance, how that this Complainant before her pretended Marriage with this Respondent, was her self no better but a meer Maid servant in the house of his Grand-mother in Law, who was then called Martha, or Mat, and being sent out by her Mistress to wash Daglocks, or the befouled locks of Sheeps tails, at a brook running by an open high-way side; at which time, the Respondent out of tender love griev'd at her disparagement gave a groat to a poor woman to wash in her stead, that she might be excused, and she was so: She ought not therefore to have envy'd, that he who had so much love for her a Maid servant, had some lawful kindness also for another of the same degree.

2dly. To the second Charge, That this Respondent, as one unmindful of his conjugal vow, and seduced and instigated by the Devil, did about ten years since commit the foul crime of Adultery with the said Mary Tomkins his maid-Servant. This Respondent further saith, That this is a pernicious and slanderous lye, invented by the Complainant Martha her self at the insinuation and instigation of the Devil, and her foul mouth'd sons. For as for matter of Adultery, it is a thing utterly inconsistent with her own Charge. For the said Mary Tomkins being no Man's wife, but a maid-servant, as her own self avers, and the said Respondent being no woman's Husband, as she also her self must needs know, unless of the said Mary Tomkins; with what face of impudence could she call it Adultery, had such a thing been done as she alleges? For the Complainant her self has so often confest it, that it is out of her power to deny it, how that above one year before that ten years since, wherein she charges this Adultery to be done, she had clearly Divorced her self from this Respondent's Bed by a malicious and obstinate Desertion, having utterly dissolv'd all bonds of wedlock between this Respondent and her self by her own Authority, by breaking her conjugal vows, in wilfully denying the Duties of Marriage required in holy Writ. And yet further to satisfy all the World how unjustly this Respondent is charged with this foul crime, he does hereby solemnly protest and declare, and does hereby offer himself before this Honourable or any other Court, to take his Compurgatory Oath, That he never had to do in a carnal manner with any Man's Wife breathing. And that he never did deny Marriage Duty to the said Complainant his pretended wife, while she was his wife, and that he had no hand of contrivance in putting her away from him, but that the separation which was made, was perfectly and purely her own act, in a free, pernicious and obstinate refusal of her Marriage Duty.

3dly. As to the Fornication and Incontinency wherewith the Respondent is charged, he farther saith, 1st. As to Fornication, which is an heinous sin, whereby a Man is guilty of carnal knowledge or uncleanness with any Woman, forbidden by God's Law, or by excess of carnal usage with his wife, or any other Lawful woman: He saith as to the last, he cannot deny but he hath been guilty, and the first and greatest act of Fornication that his conscience can charge against him, was with this Complainant Martha while she was his wife. And that as for any other matter of Fornication this Respondent doth heartily protest

protest in the presence of God, and is ready to take a Compurgatory Oath upon the same, at what time soever it shall be lawfully required, that during all the time before and after the day of his pretended Marriage, with this Complainant about the Year 1651, unto one whole year and more after the time of *Dissolution* of the said Marriage, by means of the wilful, obstinate and malicious *Desertion* of this Complainant, he never had Child by any Woman besides the Complainant her self, and never in all that space went in unto any common Whore. And tho this Complainant and her *two ungracious sons*, have often upbraided, slandered, and reviled this Respondent with most abusive raileries, and have filled the Country with many slanders and suspicious reports of matters said or done above twenty or thirty years since, concerning what kindness this Respondent might have shewn to particular persons more than ordinary; this Respondent doth solemnly protest and declare, that he never had *carnal Knowledge* of any such woman, for whose sake he was aspersed, nor did he ever attempt or desire such a thing of any one of them so spoken of. And as for the said *Mary Tomkins*, this respondent farther saith, That until utterly relinquished by his wife, and above one whole year after, she never had any child by him, nor was she with child by him: And after that time he was guilty of no other nor greater *Fornication* with her than what our holy Father *Abraham* the Father of the faithful was guilty of, when purely for issue sake, and not of any lustful concupiscence, he went in unto *Hagar his Wives maid*, or unto *Keturah his concubine* in the life-time of *Sarah his Wife*. Now *Abraham* was not charged with any thing of *Fornication* in that case, but rather was acquitted by God Almighty as purely and truly Innocent, altho he had done the very self same thing which this naughty woman chargeth against this Respondent for *Adultery* or *Fornication*: but the case of this Respondent is much easier than that of *Abraham*, forasmuch, as at the time aforesaid *Abraham* had a wife then in bed with him; but this Respondent had no wife, unless it may be esteemed that the said *Mary Tomkins* was his lawful and his only wife, according to the sense of holy writ.

Lastly. As for *Incontinency*, which in it self is no sin, unless it be expressed in unlawful uses. This Respondent doth confess and allege, that he is one of those men, of whom our Saviour hath declared, saying, *all men cannot receive this* Saying, *Mat. 19. 10.* And of whom *St. Paul* hath declared. Saying, *They*

They who cannot contain, let them marry, for it is better to marry than to burn. 1 Cor. 7. 9. Now this *Respondent* being not naturally endowed with the gift of *Continency* from heaven, had licence by God's Law to marry. And being married, his wife denied him her *conjugal duty*; that is, she did obstinately deny him the use of her marriage bed. In this case what should this *Respondent* do? To go in unto a Whore, he might not do. And to marry another wife, without a Lawful licence from lawful Authority, it was not convenient, because of a statute law in force, that under a severe penalty, no man might have two wives. And tho in the truth of this case, it was not having of two wives, for that the marriage of the first was of course dissolved: Yet being under Judicature of others, who might censure according to their own sense; there was danger of being pinched by the Judge, tho not by the law; and therefore it was an hazardous case. And in those days wherein this *Desertion* was made, Popery had possessed the supream Seat, and there were high Commissioners superceeding all other courts in power, who acting in favour of persons Popishly inclined: No sentence could reasonably be expected according to the Justice of holy writ, wherein the *Popish Doctrins* clashed with the sense of the *Reformed Church*; they holding marriage indissoluble, as one of their seven Sacraments, without a *Dispensation* from the Pope: And these allowing a clear Dissolution thereof, in case of a *Desertion*, according to the Doctrine of St. Paul, in 1 Cor. 7. 15. In this case therefore a Man's own Conscience was a good Judge in the case, at least until contrary matters could be proved before a competent Judge. And the testimony of holy writ was a sufficient law for Conscience to be guided by, and this without the assistance of being backt by Authority, in a case where an *Authoritative sentence could not be had*: As it was in St. Paul's time wherein the Magistracy being altogether *Paganish*, no such sentence was required as needful. And as in the *Marquess of Vicum's Case*, wherein the supream Authority being *Popish*, he married again without such a Sentence. 'Tis true indeed, he had a sentence by Authority from the *Syndick of Geneva*: But that was as much as just nothing, for that first, That *Syndick* had no Authority to summon his wife to appear at their court, she being not under their Jurisdiction: And secondly, being a Lay Power, set up of their own accord, without power from God, or his word, had not so much power as the own conscience of the *Marquess* himself. And now as the case stands,

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this *Respondent* humbly presumes, that the honourable Court of *Archers* cannot and will not judiciously reprove him, who hath acted nothing but what is agreeable to holy Writ and a good conscience; and humbly prays that this Pernicious *Complainant* may be called in to answer the *Allegation* of this *Respondent* against her, and forasmuch as these secret dealings of the marriage-bed being difficult and doubtful to be made plain by eye witnesses, that the said *Complainant* may be required to answer upon her oath, unto the charge of this *Respondent*, whether or no she hath not thus causelessly, maliciously and obstinately denied unto him this *Respondent* her conjugal duties, and that tho she was often intreated to the contrary, and all possible means were used, and that for above a twelve-month, to wit, from the 12th of *July*, 1686, unto the month of *September*, 1687, but she would not yield unto him. And this in trust, that upon her just confession and due proof hereof made, this *Respondent* may by lawful Sentence of the said honourable Court, be declared quit and free, and fully dissolved from all bands of marriage with this *Complainant* the said malicious Desertrice; in order that he may lawfully consummate that lawful marriage, which in part he hath entered into with another woman. For the *Respondent* humbly conceives, that his first marriage with the *Complainant* being by her default absolutely dissolved, and it being utterly unlawful for him to go in unto a Whore, that necessity required him who could not contain, and conveniently could not marry with safety, to take another woman, as he did, after the manner of the faithful and holy *Abraham*, for issue's sake, and to marry her as well as reasonably could be done. And whereas this *Respondent* has utterly compurg'd himself by his protestation of Innocency, and his readiness to make Oath of the same, and there appearing none the least clear proof to the contrary, he humbly expects; and hopes that notwithstanding this impudent slander of this wicked woman the *Complainant* his pretended wife against him, this honourable Court, and together therewith, the whole World, will pronounce and think him clearly Innocent; and that not only from the foul crime of *Adultery*, but also from the heinous sin of *Fornication*; and from all unlawful *Incontinency*. But before this *Respondent* concludes his full and perfect answer to this second Article of the Libel: He humbly thinks himself concerned, as he is a Divine in holy priestly orders, to argue for the better satisfaction of this Honourable Court, and of all Persons Clergy and Laity, unto whose ears this Case may perhaps arrive

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what is to be done in the case of desertion, and what ought lawfully to be done in all respects. And that according to the Judgment of the ablest and best Divines in all Christendom, and according to the Civil, and Canon Laws in these times of Reformation.

The true State of the Case of Desertion, and whether made by the Man or the Wife.

St. Paul saith, 1 Cor. 7. 15. If the Unbelieving depart, let him depart; a Brother or Sister is not under bondage in such a case: But God hath called us to Peace.

Next, Mr. John Diodat of Geneva, in his Annotations upon the place, writes thus; 1. Depart: i. e. be Divorced for hatred to the Religion, or Marrieth another: Or that all possible and reasonable remedies having been used, and a convenient time allotted for that purpose, the Unbelieving party cannot be induced to a due conjunction. A brother, namely the believing party, is loosed from the Bond, being thus forsaken by the Unbelieving Party.

Johannes Wollebius, Dr. Theologiæ in Acad. Basil. in compendio Theologiæ, Cap. XI. Fol. 245. [Scribit ut sequitur,] viz. *Simpliciter conjugio repugnant Adulterium & malitiosa Desertio Utrumque istorum parit divortium.* [De desertione dicit.] 1 Cor. 7. 15. *At si infidelis sese separet separatus esto, non est servitutis subjectus Frater aut soror in hujus modis casibus*

Amandus Polanus a Polandsdorf Syntagma-
te Theologiæ Christianæ, Lib. X. Cap. 55.
De Divortio conjugum. Scribit ut sequitur,
viz.

Simply, Adultery, and malicious Desertion, do dissolve Marriage. Either of them do make a Divorce.

Divorce is a lawful dissolution of the bonds of Marriage.

The causes of it are two only ; Adultery and Desertion. That is, a malicious departure of one party from the other, either of hatred to Re-

ligion, or out of Levity or impatience of the restraints of marriage, or of any other unlawful Cause ; refusing to perform marriage duties.

Inter has causas ea est differentia, quod Adulterium sit propria atque unica causa dimittendi conjugem adulterantem, atque ; in

In Adultery the innocent Husband dismisses his Adulterate wife. But in Desertion, the innocent Husband is passive, being deserted of his wife who leaves his bed.

Divortium est legitima conjugii solutio. Cause divortii duæ sunt tantum : una Adulterium, altera desertio, id est malitiosa alterius conjugis discessio, nulla justa causa, sed vel odio verae religionis propter quam cum conjugē habitare recusat, vel levitate vel injusta patientia freni conjugalis, vel aliis non justis, & sufficientibus, causis, 1 Cor. 7. 15.

eo casu proprie conjunx innocens divortium facit, ac proinde aliquid agit, conjugem dimittendo. In Desertione autem malitiosa & pertinnaci conjunx innocens non agit sed patitur : aliud enim est dimittere conjugem Adulterantem, aliud conjugem ultro Discedente dimittit & deferi, nam quia conjugem ex destinata malitia discedente deseritur, is patitur & non agit ; non dimittit conjugem, sed animo retinet & retinere cupit. Quod propter is maritus non potest dici secisse divortium contra christi verbum, quod, Mat. 5. 32. & Cap. 19. 9. extat qui injuriam hanc ab infideli patitur ; & qui manet in vocatione sua quantum in ipso est, licet parte altera discedente. In procedendo ; si non procedit reconciliatio, pars innocens non potest cogi ut recipiat ream.

In the process, if no reconciliation be made before, the innocent ought not to be compelled to receive the guilty

But having lived honestly, the Judge ought to pronounce him quit of the first marriage, with free liberty to marry again.

Sed si persona accusans honeste vixit, & petit ferri sententiam. Pronunciatur hoc modo Cum persona quæ deliquit suo scelere dissolverit conjugium, iudex autoritate evangelii personam innocentem pronunciat esse liberam & expresse ei concedit, ut pro sua conscientia percontrahat aliud conjugium.

Wolfgangus Musculus Dufanus in Commen. in Mat. Evangel. Cap. v.

Necesse est ut certos causas statuamus ob quas liceat usurpare Divortium etiam coram Deo, salva conscientia & pacata.

We must shew the certain cause of Divorce by means whereof

with a safe and quiet Conscience a man may marry again : of this kind are two, Divorce of Adultry, and Desertion.

Hujus generis geminam invenio culpam per quam solvatur matrimonii vinculum. Una est quam dominus hic ponit, dicens nisi causa stupri, &c. Altera est, quam Apostolus assignat, 1 Cor. 7. 15. Cum dicit quod si incredulus discedit, discedat. Non est servituti subiectus frater aut soror in hujus modi casu. Si infidelis cohabitare nolit aut reliqua conjugii jura Religionis causa recusavit. Hic inquit Apostolus servituti non est Subiectus. Quod ergo Christus non dicit, quisquis deseritur ab uxore sua quavis de causa, & aliam ducit mæchatur: sed quisquis repudiaverit uxorem suam quavis de causa, nihil ad eum pertinet; quo uxor non dimittitur, nec eiicitur sed illa sese ultro perfida separat, & discedit, mariti fidem obnoxiam sibi jam amplius non habet.

Christ does not say he who is deserted of his wife, and marries again commits Adultery. But he who dismisses his wife does so; for she unfaithfully Divorceth her self, and therefore deserves no more faith from her Innocent Husband.

Ambrosius apud Musculum in eod. loco.

Locum hunc exponens Ambrosius dicit non debetur reverentia conjugii ei, qui horret authorem conjugii. Non est enim ratum Matrimonium quod sine dei devotione est. Ac per hoc non est peccatum ei, qui demittitur propter deum, si alii se junxerit. Contumelia enim Creatoris solvit jus matrimonii circa eum qui relinquitur, ne accusetur alii copulatus.

St. Ambrose is positive that whoever relinquisheth her Husband, has

utterly dissolved the bonds of Matrimony, and that the relinquished Sins not in marrying another.

Gulielmus Bucanus S. S. Theologiæ in Acad, Lausannensi Doctissimus Professor institutis Theologiæ, seu Loc. Com. Christianæ religionis.

A perfect marriage may be two ways dissolved. 1 when by Law it is in its self null or declared so to be. 2 When for lawful causes, it is made null.

Locus XIII. §. v. *Quot modis Consumptum Conjugium dirimitur? Duobus modis. 1 Cum id quod per se, & jure, nullum est, pro nullo habetur, vel ipso jure nullum esse declaratur.*

2 *Cum conjugium quod ratum fuit & confirmatum, dirimitur legitimis de causis.*

§. XII. An igitur possunt Legitimia conjugia dirimi?

Our Saviour's sense in Mat. 19. 8, 9. with St. Paul in 1 Cor. 7. 15. may be thus reconciled.

Posse, justis de causis, Deut. 24. 1. Et ex ipsius Christi verbis. Mat. 19. 8, 9.

§. XIX. [*Qua ratione cum Christo est Reconciliandus Paulus qui 1 Cor. 7. 15. propter Desertionem divortium fieri possit, statuit inquit, &c.*]

Christ treateth of one unjustly dismissing his wife, according to the question asked St. Paul teacheth of one unjustly dismissed of his wife, in answer to the question ask'd him in case of an Infidel wife deserting: Whether a believing Husband be so strictly tied up, that he cannot marry another Wife?

Christus loquitur de faciente divortium, seu de eo qui dimittit injuste. de quo tantum interrogatus fuit. Paulus vero de patiente, seu de eo qui injuste dimittitur; qui interrogatus, an si infidelis fidelem deserat fidelis teneretur sic astrictus infideli, ut ad secundas nuptias transire non posset? Respondet si infidelis discedat, personam desertam a servitute, id est a vinculo conjugii liberam esse, post quam scilicet omnia expertus fuerit, ut infidelem discedentem revocet ad officium. Ita, quam Christus ostendit causam divortii faciendi; Paulus vero causam divortii paciendi, & liberationem obtinendi propter desertionem.

To which he answers, That after all lawful means used to reclaim her, he may marry another wife.

§. XX. [*Qualem intelligit Paulus Desertionem?*]

Hinc est quod magni nominis Theologi infidelitatem illa de qua loquitur Paulus, revocent ad genus, videlicet ad quamlibet malitiosam injustam & pertinacem discessionem, & desertionem; juxta, illud 1 Tim. 5. 8, [Qui suorum, maxime autem domesticorum curam non habet, fidem abnegavit, & infideli deterior est.] Et videtur etiam idem Apostolus cum dicit [non est servituti subiectus frater aut soror in ejus modi] paria peccata intelligere,

And the same learned Author says, that by an Infidel, St. Paul means every one who is a malicious and causeless desertrice; according to St. Pauls sense in 1 Tim. 5. 8.

§ XXIX [Quod si magistratus officium negligat?]

Valeat perceptum Apostolicum ad Titum. 3. 10, [Hæreticum hominem, ergo & Atheum, Apostatum, & Blasphemum post unam & alteram correctionem evita.] Et dictum Christi Luk. 14. 26, [si quis venit ad me & non odit patrem suum & matrem, & uxorem, &c. non est me dignus.] Et Mat. 18. 9. [Si oculus tuus scandalizat te erue eum.] Item, [Omnis qui reliquerit agrum, domum vel uxorem, &c. Centuplum accipiet, Mat. 19. 29.]

And he farther saith, that if the Magistrate neglect his Office; the innocent party is free to marry another Woman, without his Sentence, and to reject his Infidel Wife, as freely as he may reject an Heretick after once

or twice admonition. Tit. 3. 10.

Stephanus Szegedinus Panonius in Theol. Sinceræ locis Com. Tab. XI. De devortio scribit & de absentia conjugis.

[Quod de voluntaria & affectata absentia statuendum?]

Respondet Talis absentia pro desertione habenda est: Et est malitiosa.

This Author says, That an affected voluntary

absenec of either party is to be taken for a malicious Desertion.

Tria trium clarorum virorum memorabilia dicta.

Petri Mellii. In causa Criminis pro quo lex Dei hominem interfecit

feci jubet, divortium permitti potest: Si aliter reconciliatio inter conjugales stabiliri neutiquam possit.

Stephanus Szegedini. *Ibi inter volentes Matrimonium solvi potest, ubi fines omnes conjugii impediti, ac sublatis sunt preter adiutorium, quod etiam mendicis ipsis debetur.*

Tab. III. *Si Infidelis fidelem conjugem Relig. causa repudiat: fratrem vel Sororem, liberat. a conjugii vinculo pertale repudium.*

Alberti Bakonii, *melius est dissi Angelice, quam conjunctos Diabolice vivere: etiam eos quibus nulla ratio ad perpetuum suppetit divortium, & ea ratione pax magis colatur.*

And that the unbeliever deserting.

does absolutely dissolve the bonds of Marriage.

Such (as by these Quotations does appear) are the Doctrines of all the most learned Divines of the Reformed Religion beyond Seas, whether Lutherans or Calvinists. And our English Divines do agree with them therein. Thus the learned Dr. Hammond in his Annotations upon, 1 Cor. 7. 15. And so the Assembly of Divines upon the same; only as to marrying again after Desertion, they do not so largely express their sense, as these others have done. Yet in his practical Catechism, the Doctor allows clearly, *Marrying again in Case of malicious Desertion*, Book 2. §. 7. And so Nicholas Bishfield upon 1 Pet. 3. 7. Also the learned Perkins, and diverse others. Now as for the learning of the Civil-Law, this Respondent cannot pretend to be so generally experienced: Yet in confidence, that Reformed Civilians do agree with our Divines. He shall only introduce one Quotation out of a very learned Doctor of the Laws, and of the Church and Kingdom of Denmark, Melchior Kling, in his learned Readings upon the four Books of Institutions of Law, by the Emperour Justinian. Imprinted at Leyden in the year 1582, and Dedicated unto Christian King of Denmark; which speaks as follows;

This learned Author shews, That the Law of the new Testament takes place before all Canon and Civil laws and that by Authority of the new

Lib. I. Tit. X. de nuptiis Fol. 32. Num. 1. *Fus novi testamenti habetur in eo quot ad divortia attinet. Enumeranter enim duas causas divortii, Prima est Adul. de quo Mat. 19. secun. est si alter ex contrahentibus infidelis fuerit, & noluerit habitare cum sec. infideli dicefferit permissum est infideli iterum nubere, 1 Cor. 7.*

new Testament without doubt. After Desertion. the deserted is so free from the marriage with the Desertrice, that he may take another wife.

Fol. 32. Numb. 1. *Certum est quod jus novi Testamenti Canonibus non cedit: igitur jus novi Testamenti, in casibus in eo decis simpliciter sine aliqua mutatione sive limitatione servandum sit. Et in hoc causa sine dubio pugnat jus canonicum cum jure novi Testamenti in multis. Item, Utrum sola desertio conjugis sine Adulterio sit causa divortii, & utrum post divortium innocenti liceat, altera parte vivente contrahere matrimonium? sed de his questionibus infra dicemus.*

Fol. 54. Numb. 5. *De divortio. Aut queras utrum Matrimonium propter Hæresim vel talem errorem, in totum possit dissolvi ita quod fidelis, altera vivente, habeat transitum ad secundas nuptias & hoc casu sine dubio, fidelis potest nubere.*

Now according to the sense of all these learned Divines, both at home and abroad; and the sense of the civil Laws, which as it shall seem by this one learned Doctor, does agree with them in the same sense: It does appear, that in case of a Desertion made by the wife, the marriage with that wife is clearly dissolved, she having divorced her self from her Husband's Bed; or rather as our *English* Divines tell it, she hath clearly made Null and Void, by that act of Desertion, that Marriage which was between her and her Husband: And that so, as by the holy word of God, the marriage is declared Null and Void in it self without any farther sentence of the Magistrate. For thus saith the Text, If she will depart, let her go; there needs no sentence of the Magistrate in the case, especially where no Magistrate can be had in the case, where the Magistrate either will not act, or at least will not make sentence, as the holy word requireth. For so saith the Learned *Bucanus*; in such a Case after a convenient admonition, and means used to reclaim such a Desertrice, and she will not be reclaimed: A good Husband may as freely and safely reject her Society, so as never more to have to do with her, as he may reject an *Heretick*, so as never more to have to do with him, because he is an *Heretick*; and this he may do, without any sentence or leave had of the Magistrate, *Tit. 3. 10.* Nevertheless for the conveniency, and the well being sake of the Case, the sentence of the Magistrate is thought meet to be procured, were it for nothing else, but to abide as a sure test that all matters in the case were rightly and truly

truly acted. For otherwise, the Desertrice may return again, be it only to despight her wronged Husband, and denying the Desertion, may claim her old right anew. And besides, there may be controversies about allowance of Maintenance; all which by a just sentence may at once be stopped. Now, this *Respondent* allegeth, that in his case with his deserting wife, there was no Authority but what at the highest was *Popish*, that he could any way appeal unto; and the ground of the *Desertion* being chiefly and only for disinheriting his eldest son, who had left his Father's religion to become a *Roman Catholick*; he could expect no remedy, but what would be superceded by the High-Commissioners, from whom he could expect no right done him against the concern and interest of *Popery*. 'Tis true indeed, that it was alleged, as if this *Respondent* should say, that he had another woman with child by him, at that time, for which cause his wife the *Complainant*, pretended to have relinquished him: And she alleges she can prove such words uttered by him. Unto which he answers, that true it is, he was in a great *Passion*, because of his Son turn'd Papist, and his wife violently siding with him, to excuse and justify him against this *Respondent*: And what words in the heat of passion were uttered by him, he does not perfectly remember; it is a matter on her part to be proved. But if some such like words dropt from him, he might be mistaken by the hearers, and misunderstood; or was it true that he said so, before it was not true that he said; and he is ready to make oath thereof when ever call'd thereto, that there was no such thing done at that time, or ever before, nor of above a twelve month after, and there is no track, or appearance, or testimony can be made of any such thing done as is pretended. But for a twelve-month after her desertion began, he did continually solicit her to be reclaimed, and she would not, tho no sign nor token appeared, or was ever heard on. in all that time, of any Woman with Child by him. But this *Respondent* is able to make proof, by several suspicious tokens, of her unfaithfulness, and by her taking part with her kindred and acquaintance against him, and by secret purloynings made of his goods, besides a constant allowance always made her; and by her affected and voluntary absence from him for a whole year and an half together, and by continual and causeless quarrels against him, that it was a causeless contrived malicious and obstinate Desertion made against him, propagated and encouraged by her rebellious children. And now besides all these things, it is now above eleven years since he

Desertion

Desertion first began, and yet in all this time she hath made no complaint. Moreover, this Respondent hath several times offered her to refer all matters in difference with her, and offering to be concluded by reverend and holy Fathers in God, the Bishops; and particularly by the late Bishop of *Beth and Wells*, unto whom she was contented to refer her self, and yet afterwards would not stand to it, nor to any other Bishop until at this time, knowing this *Respondent* to be utterly destitute of maintenance she sued out Process in this Honourable Court, verily thinking to destroy this *Respondent*, and to tread on him in his distress. And this notwithstanding he has been hitherto so kind to her, as to allow her maintenance all these Years of his free good will, without any condition, until of late by means of false friends and mishaps of fortune, he wanted daily bread for his own relief, and could not allow her for want of wherewithal.

And now having answered her scandalous Charge, this *Respondent* is ready to proceed to the matter of Fact. And farther saith, that the said *Mary Tomkins*, together with this *Respondent*, and other company, did go over into *Holland*, upon a very lawful and good account, having a license of Absence from his *Diocesan*, but not as an *Adulterer*, or *Fornicator*, or *Incontinent*, or for fear of any Discovery, as this *Complainant* maliciously insinuateth. For this *Respondent* had a Cure at *Delft* in *Holland*, and lived there publickly, being employed to Preach to the *English* and *Scots* in a publick Church in *Delft*, for almost of the time he tarried there, and held Correspondence with *Alban* this *Complainant's* Son, all the time, who from time to time sent Letters, and gave an account of his rents, and had a continual course of Letters from this *Respondent*. And there was no such thing as living incontinently with any woman, much less with the said *Mary Tomkins*. And the said *Mary Tomkins* had no Bastard Child born there. But true it is, that the said *Mary Tomkins* living there in *Delft*, in good reputation, was delivered of a Daughter, who was Baptised, and named *Mary*, born on the 26th day of *June*, 1688, about nine years since. And of this Child, this *Respondent* does confess, he is (as he verily believes) the true Father. And he humbly conceives it is a lawful and a well-born child. For that being deserted of this *Complainant*, his pretended Wife, above two full years before this Child was born, it was lawful for him to join himself unto another Woman, as by all the testimonies aforesaid, it does appear. And whatever Child he

D

had

had at that time, was no wrong to her who had utterly forsaken his bed. And this child being but newly Conceived at his coming away out of *England*, there could be no such thing as she maliciously in her Lidel suggests; that it was taken notice of as she said, that the said *Mary Tomkins* was with child. Now true it is, that this Respondent was not married to the said *Mary Tomkins*, according to the customs of the Church of *England*, for reasons aforesaid. And whereas, many will be apt slanderously to charge this Respondent as one keeping a Concubine, or living in Concubinage with an unlawful woman. This Respondent humbly answers, that in a sense he is lawfully married to the said *Mary Tomkins*, and that his Children by her are lawfully born children and no bastards.

Of a lawful Concubinage in a Case of Necessity; wherein lawful Marriage conveniently or possibly cannot be obtained.

AND to this purpose, he humbly conceives himself concerned to make it appear by *God's Holy word* and the *English customs*, and good *Laws* of this Land, there is a sort of most lawful and necessary Concubinage, that in many cases cannot possibly be avoided. This first Wife this Complainant called *Martha Butler*, being never lawfully married to him, this Respondent could never be his lawfully married wife; and yet both of us having done our true endeavours to be lawful man and wife; it was no fault of ours that we were not so; for at the times then reigned, few were or could be lawfully married. But we were in a fair way to be lawfully married, and had been so had not the mistake of the Minister marrying, and unhappy accidents prevented us. Wherefore, having done what we could do, who shall blame us that we lived almost forty years together in Concubinage, and were never truly married. Unti

Until by the *Act of Indemnity* at the coming in of *King Charles the II*; our marriage, and a thousand more unlawful marriages, were all made good in Law, as if they had been the most regular marriages all of them, that ever were made good in Law, as if they had been the most regular marriages all of them, that ever were made by Ministers in *holy Orders*, according to all the rites and Ceremonies required by the Laws and Customs of the Land. Now all these thousands of Marriages, which were made by the *Directory*, and by the Justices, and by Quakers, and many by taking one anothers words, were all of them but meer Concubinages and no more, but as if Man and Woman had gone to bed together, and begot Children without any Ceremony at all: For our Law calls all Bastards that are born out of marriage, and all *Directory*, and Justices marriages, were as much illegal, as those without any ceremony at all, and were all equally fellows in Concubinage, until the said *Act of Indemnity* set all strait, and made all good. Now by the said *Act of Indemnity* of the *XIIth* of *King Charles the II.* it is expressed. That any of the Subjects of the said King, or the Heirs or Executors of any of them, shall not be sued, vexed or inquieted by, or in the behalf of the Kings Majesty, his Heirs or Successors, in their Bodies, Goods, Lands or Tenements, for any manner of matter, cause, contempt, misdemeanors, Marriages, &c. Or any other things suffered, done, or committed, before the said 24th of June 1660, against his late Majesty, or that now is, his Crown, Dignity, Prerogative, Laws or Statutes; any Statue, Statues, Laws, Customs, or Usages heretofore had, made, or used, to the contrary in any wise notwithstanding. And that all the said Subjects, &c. may plead this *Act* for their free Pardon. Now setting aside Laws and Statutes of this Realm, according to holy-writ, there is no more ceremony required, but consent on both parts, before witnesses sufficient, and bedding together, according to *Exod. 22. 16.* without any presence necessarily required of either Magistrate or Priest. And tho' every one Man, was to marry but one Woman, who was to be Lady or Dame of the Family, yet God did plainly allow of a lawful Concubinage, or additional wives for the bed, for issue sake; the issue whereof is no where termed Bastards, either in old or new Testament; but upon all occasions, in case of Heirs Male wanting by the proper Wife, the sons of Concubinage became Heirs. Thus *Ismael* Son of *Abraham* by his Maid-servant should have been heir if *Isaac* had not been born of *Sarah* *Gen. 17. 18.* And thus *Rehoboam* Son of *Solomon* by *Naamah* a meer Concubine, was his Heir unto the Throne, for that he had

no Son by his *proper Wife*: Yea, tho *Daughters* he had several. And thus *Jephthah* Son of *Gilead* by a *Stranger*, or a *meer Concubine*, because the *Prince of the People*, before any of his brethren, *Born of the lawful Wife*, because of his *Abilities above any of them*. *Judg.* 11. 1, 2. and 11. which had he been a Bastard, could not have been. For a Bastard might not enter into any Office in the Church, to become so much as a Constable, or a Church-warden, much less to be a King or Judge, *Deut.* 23. 2. but was to remain a slave, equal to the *Gibeonites*, a *bewer of wood and a drawer of water*. And at this rate, none were esteemed Bastards but children begotten in *Apultery* or *Whoredom*, of another mans wife, or of a common *Whore*; and such could not Inherit. Incest was a foul thing, and yet the Children born of Incest did Inherit, and were not reputed Bastards, as *Pharez* Son of *Judah*, by his Son's Widow, and *Fanna*, Son of *Joseph Arses* by his Niece: Both which were Heirs in the Genealogy of our Saviour, and therefore no Bastards. But the Pope made Bastards of such, which by God's Law are reputed well-born. And from the Pope, our Statute Laws still keep up the practice: Declaring all Children to be Bastards which are born out of Marriage. So as Children begotten out of Marriage, was a sin against the King's Laws and Statutes, and yet no sin against God's Law. Now, it happened, that between the years from *Jan.* 1. 1637, unto the 24th of *June*, 1660. there were so many hundred thousand Children born out of Marriage, because of the true Laws of Marriage but down, that there was no other remedy to heal so many disorders in marriages, by sinning against the King's Laws, but by an Act of *Indemnity*; and by that Act, all manner of sins against the King's Laws, in case of deficient marriage, except some exceptions in that Act expressed, whereof this is none, being pardoned. All sorts of coming together, by any single man and single woman, and not disallowed by God's Laws, and the children born of such a bedding together, are made as lawful to all intents and purposes, as if they had been married in all things according to the rites and ceremonies of the Church of *England*. And hence all manner of *Concubinages* between single persons, during the time aforesaid, were made good in Law, by a Statute-Law. And thus the marriage of this Respondent with this said Complainant, became a lawful marriage by Statute-Law, as well as by God's Law. And so it was also of all other Concubinages of the same time, from 1637, to *June* 1660. And the children of such a bed, were lawful born children, and no Bastards.

Bastards, but were and are to be taken as the true and lawful Heirs unto their Fathers Dignities and Estates, in as much as if they had been born of lawful marriage. And now the second Marriage of this Respondent with the said *Mary Tomkins*, being a lawful Marriage, according to God's word, barr'd of the benefit of the King's Laws only, because of dangerous inconveniencies in the way. And being in the same state as all the Concubinages in the years aforesaid, laments only the want of the same remedy. And being a lawful marriage before God, pleads for it self, as a lawful and innocent Concubinage, tho not a good Marriage according to the King's Laws.

2ly. This Respondent farther pleads, that tho' the Statute-Law of this Realm, seems to condemn this his deficiency of marriage; yet the customs of the Kingdom, do fully and plainly allow of it. For first, whereas it appears by the *Chronicles of Scotland*, that *Robert Stuart*, the next Heir unto *David then King of Scotland*, as his eldest Sisters Son, lived with *Elizabeth* the daughter of *Sir Adam Moore*, as his Concubine out of Marriage, and had by her three sons, *John*, *Robert*, and *Alexander*; and afterwards the said *Elizabeth* still living, he married with *Euphame* the Daughter of the *Earl of Rosse*, by whom he had two Sons, called *David* and *Walter*. And after that, being Crown'd King, *Euphame* died, and he married his old Concubine *Elizabeth*: And being old, he called a Parliament of Lord's Spiritual and Temporal, to advise him which son of right ought to inherit his Throne. And it was resolved for the eldest Son of the Concubine, before the Sons of his married wife. For that she had been a true wife to him before God in all things, excepting the deficiency of the rites and ceremonies of marriage. This therefore was approved of by all the wisdom of the Realm, to have been a lawful Concubinage. And insomuch as the Heirs of that Concubinage are without any gainsaying admitted also to inherit the Imperial Throne of this Realm; it is also become an allowed Custome in this Kingdom also, That the Heirs of a lawful Concubinage may inherit the Patrimony of their Parentage, Thus also in the case of *William of Normandy*, who was born out of marriage, who was admitted, and his Heirs after him, to enjoy the Imperial Throne of this Kingdom, and owned as a lawful King by all the Nobles and Bishops of this Realm. *Henry* the seventh also of this Kingdom was admitted and allowed in several Parliaments, as the lawful heir of *John Duke of Lancaster*; altho' he was the Grand-child of *John Earl of Sommerfet*, the son of the said *John Duke of Lancaster*, by *Katherine Swinford* his Concubine, born out

out of marriage ; and as I take it, in the Life time of *Constance* his Wife : And the Heirs of these Concubinages do continue unto this Day. Now have Parliaments admitted of such things as these as lawful and good Successions ; and shall they not be called the customs of *England* : And if lawful customs, then Custom pleads to be of kin unto a Law ; yea, tho' at the same time it seems to clash with Law : But we must distinguish between matters of Concubinage ; for tho' some of them may justly by Law be condemned, yet some other of them in the mean while ought to have a dispensation against the perils of the Law. And among others, this Case of the Respondent humbly begs a Reprieve, in as much as necessity for want of the Power of Continency requires an honest company of some Bed-fellow ; but it may not be a Whore, and cannot with safety be a married Wife, according to the Laws of this Land, for want of an *Authoritative Sentence* to acquit him of his former marriage, which when time was, could not be gained ; and thus between three dangerous Rocks, necessity hath invited, or rather thrust him into a Bed of Concubinage ; which is unto him in all points as it were a lawful marriage.

But 3^y. This Respondent having made two such Marriages, and yet neither of them of choice as to the manner, but both of them of a sort of necessity, deficient of performance, according to the good Laws of this Land, humbly craves of the good Reader his Patience, to hear out the justification of his Innocency, in the last as well as in the first : And lest he may seem in the Eyes of ignorant and scornful men more guilty of more rashness and incontinence, than of honesty and innocency ; he humbly prays it may be considered in the first place, How apt a thing it is that many innocent and holy doctrines may be generally cry'd down as gross Errors, which are quite otherwise ? As for instance, in the Case of *Priests Marriage* ; which is a matter wherein the Church is now perfectly satisfied, that it is both an Honourable and a truly holy practice ; and yet it cannot be forgotten, how it was cryed down in our Grandfathers days, as a most pernicious, Hellish and Abominable Sin. And as it was with *Priests Marriages*, I am of Opinion we may find some other matters still spoken against, that may upon serious consideration be found as innocent and holy as that is at this day. And amongst other things I propose a lawful Concubinage, as in some cases it may be required : And to this purpose it is written in the New-Testament, *Heb. 13. 4. that Marriage is honourable in all, and the bed undefiled : But Whoremongers and Adulterers God will Judge.*

Hence

Hence it follows without dispute, That Marriage in it self is an honourable state, and that the *Bed undefiled* is so too, and that in all things as in the case of Marriage: But then upon inquiry, whether in this Text, by the *Bed undefiled*, is to be understood the *self same thing* with the Married Bed, or some other Bed plainly different and distinct therefrom, is a matter indisputable still. And now the Words *Kai* [and] as it is in the original, is a *particle copulative*, which couples Words and sentences together; and these words and sentences ought properly in such a case of *coupling together* to be of a *diverse* and *distinct* signification; for that which is the *same thing in sense* with what went before, needs no bond of copulation, being naturally joined therewith: For in such a sense had this learned Author intended by these Words, one and the same thing, he would have written saying, *Marriage (being) a Bed undefiled*, or (which is) or (if) a *Bed undefiled* is honourable; than had it been a plain case what he meant by his words: But as the Words run in the Text, *Marriage (and) the Bed undefiled*. This *Bed undefiled* according to plain grammatical Construction, must be aptly significant of some certain *Bed distinct* from the Marriage Bed; or at least the words must start a Riddle hard to be understood: 'Tis true indeed, that the word (and) is some times read as a particle *Exegetical*; as in *Ephes. 1. 3.* it is written, *Blessed be God & the Father of our Lord Jesus Christ*, are plainly significant of the same Person, yet coupled together exegetically by the Particle (and) couples not Persons, but *Relations* together; for what God is *in himself unto all the World*, is a distinct thing unto what he is unto *Christ alone*; and in this case the word (and) is used as it were properly in its own natural sense, but is taken for the word (even) as the Author explains himself in another place speaking to the same purpose; but in this Case, the words appear not in the same livery; for shall we read the words thus, *Marriage even the Bed undefiled* is honourable, yet still there will be a riddle in the case as to the Authors meaning; for why did he make account that *Marriage could not be hononeable*, unless it were a *Bed undefiled*? No, that could not be, for Marriage of it self is an honourable state in all cases and Persons, whether it be holy or prophane, whether it be among *Jews, Christians and Pagans*, and therefore needs not these words (Even) *the bed undefiled* or [being] or *that is to say,* the Bed, &c. And again, would we read the words thus; then would it follow, That all Marriages are even a *Bed undefiled*, which is not so: For that there are many prophane and unclean Marriages made; whence follows therefore of

necessity, that this learned and holy Author does in this place clearly treat of a Bed undefiled, as a Bed plainly different and, distinct from the Marriage Bed, or of some Bed out of *Marriage*, that may be truly stiled a *lawful and undefiled Bed*; and as so he seems to comprehend all those *cases of difficient Marriages*, between the year 1637, and 1660, in the Act of Indemnity aforesaid, intimating that in those Cases where the lawful ceremonies of Marriage could not aptly be had; yet those beds being honestly managed and undefiled, were therefore beds in themselves *lawful and honourable*, if no such thing as the Act of Indemnity had come forth to confirm them: And thus by the same rule and reason, this Respondent pleads, that his present bedding with the said Mary Tomkins, is a *Bed undefiled*, and therefore lawful and honourable, even as the Marriage-bed, being made at a time when *lawful Marriage could not conveniently be had*; for he having taken into his bed an *honest woman*, and no *whore*, and this without offence to God or any Man breathing, and not for satisfaction of *unclean Lust*, but purely and truly to *avoid Fornication*, and to procure of her Body an *holy seed*, to be educated in the nurture of the Lord, in *Godliness and Honesty*, and true Religion; and the Children he hath by her, do witness as much.

But may not the true and proper Grammatical construction of the words, be Testimony sufficient of the true and proper meaning of the text, and of the holy Author thereon. Let us next examine the custom and practices of the persons concerned in the words, which must be a certain exposition what this Author meant by the *bed undefiled* he wrote of. Now the Author of this Epistle to the *Hebrews*, is commonly supposed to be St. Paul; some think it was rather St. Luke; and others say it was St. Barnabas; but these things need not here to be debated. That it was one of the three is mostly agreed, and who ever it was, before he was a *Christian Jew*; and the *Hebrews*, unto whom this Epistle was directed, were also *Christian Jews*, which things must unavoidably be allowed to be true; and if so, then this *bed undefiled* must be necessarily understood as it was commonly esteemed among the *Jews*; For had their customs and practices been reprobable, this holy Author would have corrected them; but as he stiles this *bed undefiled* as an honourable state even in the case of *marriage*; so a *bed undefiled* according to the use and custom of the *Jews* at the time of this Epistle written, is to be an infallible testimony in what sense these words are to be understood; and to this purpose we
are

are to enquire into the custom of the *Jews*, first *before*, and 2dly. after *Christinity* bore date : Now *b-fore Christianity*, it plainly appears that the *Jews* had their *Marriage-beds*. And there was always allowed among the *ancient Hebrews* also, a *bed of Concubinage*, which was also held to be in it self a *bed undefiled and honourable*, and a *lawful custom* ; and at this rate, the Patriarch *Abraham*, a man without exception for holiness and honesty, had his married wife whose name was *Sarah* ; and besides that wife, he had his *Concubines Hagar and Keturah*, in his wives life-time, by both which he had issue, and that of a *bed undefiled*, and not at all tainted with the stains of *Adultery* or *Fornication* : For had not his Son *Isaac* been born of *Sarah his Wife*, his Son *Ishmael* by his *bond-maid* had been his true and lawful heir, *Gen. 17. 18*. Which could not have been, had he been born a *bastard*, as now a days such a child is reputed to be : But God Almighty so fully attested the Legitimacy of *Ishmael's birth*, by the *Blessing* he gave him, as of a *well born child*, *v. 20*. Does God usually give his blessing to bastards, who are utterly barr'd thereof unto the tenth generation ? *Deut. 23. 2*.

After the same manner also King *David* had *Michal* his married wife ; and she dead, he married *Bathsheba* his second wife ; and besides these wives, he had several other women, who were called side-wives, of whom he had lawful issue. And yet these secundary wives being none of them endowed, were but meer Concubines ; and yet those Concubines were so far from being reputed whores or unfaithful women, that God Almighty gave testimony to the contrary, by stiling them *Concubines of God's own allowance, or proper gift*, *2 Sam. 12. 8*. Does God patronise *Adultery* or *Fornication* by allowing us such a *Concubinage* to be a lawful and undefiled bed ? surely no ; what God allows of therefore, is *no Sin*.

King *Solomon* had seven hundred wives, who were all Kings daughters ; and yet by them all had no male-child : For his true and lawful heir was *Rehoboam* his son, by *Naamah an Ammonite*, his Concubine, who was born before marriage and before he was King : And *Solomon* dead, this son of a Concubine born before marriage, without contradiction was accepted of by God and man, as *Solomon's true lawfull and proper heir*, notwithstanding that he had daughters by his wife or wives, and had *Nathan his royal brother*, who, or some of his issue, were then living.

Hosea the prophet had also a married wife, whose name was *Gomer*, and she yet living, by a special command from God,

this Prophet did yet love another Woman whom he *married* not, but took her unto him for a term of years, months and days, and *dwelt with her as his Concubine*, having agreed with her for the term, to be a *true wife* unto him at a certain price of reward: And yet this was certainly a *bed undefiled*, obtained by a *special appointment of the Lord*, *Hos. 3. 1, 2, 3, &c.* Whence follows, that in the Church of the *Jews* before *Christ*, there was a custom and practice of an *honest sort of concubinage* allowed by God's word as an *undefiled and honourable bed*, which cannot by any means be denied; tho some Divines of good reputation are not willing to allow these things as well done.

But after Christianity came in, and the *Hebrew church* became *Christian*, it remains yet to be debated, whether thir custom and practice continued also in *Christ's* time in full force and power as before, yea, or not? Unto which question, this Respondent says, he humbly conceives it does continue. For first, he reckons that all lawful customs and practices once allowed of by God's word and *examples of holy Men*, are not to cease, until countermanded, or otherwise ordered, repealed, or abrogated by as good authority of *God's word* and *good men*, as at first gave them a being in the Church. And now to testifie that there never was any such repeal or abrogation of those ancient customs and practices allowed before Christianity; this testimony of the *Author to the Hebrews* is mine evidence: For the *bed undefiled and honourable* which he treats of, being certainly to be understood of the *ancient customs and practices* of the said *Hebrews*, unto whom he writes, which being no where in God's word limited, repealed, or abrogated, or so much as once spoken against; he styles at the instant of his Epistle written to be a *bed undefiled and honourable*. True it is, that those *Hebrew customs* do proceed farther than to a bare *case of necessity*, which this Respondent is not concerned to justify or to meddle with, excepting only thus far, That if *ancient Concubinage* be justifiable at large, how much more is it clearly justifiable a *Concubinage* in a case of *necessity only*. And thus far this *Author to the Hebrews* does plainly justify, that an honest woman taken into bed purely and truly to avoid *fornication*, and for *propagating of an holy Seed, issue, or offspring*, tho out of marriage, in a case of necessity, may be a *bed undefiled, lawful, virtuous and honourable*, and quit and clear of all Adultery and Fornication, notwithstanding any papal decrees, Canon Laws, or Statutes of any realm to the contrary whatsoever; and such faith this Respondent, is the true state of his case.

But

But yet to add still more light unto the sense of this holy *Author to the Hebrews*, this Respondent brings in the Evidence of the *sacred birth* of the ever blessed our Lord Jesus Christ for confirmation: Dareth any soul upon earth be so impudent as to defame the *conception and birth* of that most holy God Man, who was born without Sin, by saying, that they were stained with *Fornication or Incontinency*, because performed *out of marriage*; and yet how shall any man who stubbornly persists to deny all lawful Concubinage, make out such his sentiments, without reflecting upon our Saviour's Conception and Birth? Will such a Man think to be excus'd, by alleging that this was an *extraordinary work of God*? This answer will stain his lips more and more, instead of wiping his Mouth; for does God Almighty ever do any thing either ordinarily or extraordinarily which he forbids us to do? Should God himself do that thing which in us is called *Adultery or Fornication*, or any other Sin, he would cease to be God; for Fornication in it self is an unclean thing, and Adultery worse; and should God do one or the other, it would be doing an unclean thing, and to justify that God can do such a thing, is *Blasphemy*; and to say that a *Bed out of marriage* cannot be an *undefiled, lawful and honourable bed*, is almost as bad: Let therefore those wise and good men who have inconsiderately condemned the ancient holy Patriarchs for their Practices of *Concubinage*, as guilty of Sins which God winked at in those days, bethink themselves anew, and perhaps they may be of another mind. Conclude we therefore, that what God Almighty hath caused to come to pass, was in it self an honourable, lawful and holy thing; and what God accounts in it self to be good, neither *Pope nor Parliament* can make evil; what God hath proclaimed *lawful and legitimate*, it is past man's power and authority to make illegitimate or a *Bastard seed*.

But this Respondent stops not here, for there is another material case, testified by our Saviour himself in the new testament of a *bed undefiled out of marriage*; and this was the case of the woman of *Samaria*, (*Joh. 4. 10. &c.*) Of whom our Saviour well knowing *that she lived as a wife with a man who was not her husband*, and therefore in plain terms was his *Concubine*; yet unto this woman in this very state, without any condition made in the case of discontinuing her course of life, and without any the least reproof for the manner of life she lived: Our Saviour freely rendered her the water of life, or the thing signified by *Baptism* saying unto her positively, *that had she known who he was, she would have asked, and he would have given her of the water of life*; and after this he did tell her who and what he was; and

the hearing, did believe what he said. and did ask for the *water of life*, and consequently *she had it*: And our Saviour bad her call her husband, whose Concubine was, and *she left her water-pot and went to call him*; and as it shall seem, *she brought him* and many more neighbours with him, and he and they were all or most of them, *partakers of the same blessing*, as by the effect appears. Now saith this Respondent, had this state of Concubinage been an unclean thing, or an *incontinent course of life*, as now a days it is reputed, this Concubine and her man that kept her, could not adtly have *believed in Christ*, and been *partakers of the Holy Ghost*; as it appears they did: And was she a Concubine and yet *endued with the holy Ghost*? And was he a Concubine keeper, and yet sent for to *partake of the water of Life*, and yet neither he nor she at all reprov'd for the course of life they lived in, saying, *Sin no more*. As our Saviour in sinful cases was alwayes wont to say (as *Job. 5. 14.* and *Ch. 8. 11.*) Say we then, and let all candid hearted good men say with us, that the state of Concubinage in some cases at least, is an honest, a believing, and a saving state of life.

And now having shew'd those two sorts of Beds, which our Author to the *Hebrews* commends as *Honourable*; Next I come to treat of those he teaches to shun as damnable; and those are *Whoremongers* and *Adulterers*, whom God will Judge. The *Whoremonger* is such a wretch, who tho' allow'd to Marry, or to keep his Concubine, that is, a Woman to himself, provided he do not multiply Concubines, nor keep any Woman unlawfully, compell'd unto any man's wrong, or to that Woman's wrong, and useth her not meerly for lust, Wantonness or Uncleaness, but out of a pure desire of an holy seed by her. Yet not contented with that lawful liberty of God allow'd, chuseth rather to spend the holy seed of mankind upon common women, who sell their bodies to the use of every comer: And thus exposeth his seed to be murdered in the body, as Whores use to do by their Conceptions, or to become a *Bastard Brood*. of whom no man know's the true Father. And therefore the Mother of such is to be burned, but the Father, God will Judge. This is a crying sin which God hates. And yet at Rome, and in some Reformed States, such Whores are allow'd and encouraged, while an honest Concubinage is esteem'd the worst of Whoredom. The second foul Crime is *Adultery*, wherein a wicked man conceives more pleasure in another man's than in an honest Woman. Together with this sin are companions, the sin of *Sodomy* or *uncleaness with mankind*; the sin of *Buggery*, or *uncleaness with Beasts*; the sin of *Incest*; the sin of lying with a Woman during her uncleaness, and of giving
seed

seed to Moloch, Levit. 18. All these are great abominations, which defile the Land.

And now having done with the testimony of holy Writ, come we lastly to the practice of *Primitive times*, next after the *Apostolical Age*; wherein we find that it was not, as it is now, holden in those days such an heinous crime to have children born out of marriage, especially in case wherein marriage could not aptly be had. The first and most ancient *Laws* and *Canons* we have of those days are those stiled the *Canons of the Apostles*. Wherein it is noted that *if a man go in unto a woman who is a virgin and do in any wise deflower her, Be she poor or rich, that man is either to make her his wife, or else he is to have no wife so long as she lives.* This was the 66th of those *Canons*, and it was confirmed for a *Law* at the 6th general Council holden at *Constantinople*. Now this Canon agrees nearly with the sense of holy Writ, in *Exod.* 21. 16, 17. And shewes that in those times marriages were ordered modestly according to holy Writ: And *Concubinage* was in use as in the *Ancient Jewish Church*. For about the year of Christ 300, *Constantius Chlorus* had to Wife *Helena* the Mother of *Constantine the Great*, and in her life-time took into his bed *Theodora* the daughter of *Maximian*, by whom he had Sons called *Constantius* and *Anniballinus*, and *Constantia* his daughter. Now these three according to the *Pope's Laws*, and our present *Laws*, were esteemed base born: But in those days the *Fathers* of the Church received them becoming *Christians*, into places of Authority, never once scrupling that they were base born. *Constantine* also himself, the first Christian Emperor, had to Wife *Minervina* his lawful wife, by whom he had issue *Crispus Caesar* his first born son; and also by *Fausta* his Concubine, he had his sons *Constantine*, *Constantius*, and *Constans*; all which three lived to be *Christian Emperors*, and yet were never any of them once questioned by any of the *Bishops* of those days, for base born or bastard children. Also *Valentinian*, a very commendable and orthodox Christian Emperor, had *Severa* his lawful Wife, by whom he had *Gratianus* his eldest Son; and *Justina* his Concubine, by whom he had issue *Valentinian* his younger son. Him *Gratianus* succeeding, died without issue, and *Valentinian* son of the Concubine was called unto the throne, and was crowned by *St. Ambrosius* the Godly and good Bishop of *Milaine*. And yet neither *St. Ambrose*, nor *St. Augustine*, nor any of the *Bishops* of that age, did ever question the Emperor *Valentinian* the Father for keeping a Concubine in his Wives life-time, or *Valentinian* the Son for being base born, and therefore unfit to reign because born a bastard. For had the Bishop once questioned the matter,

Theodosius

Theodosius the great, then reigning at *Constantinople*, could and would have put him down, upon a word speaking of *St. Ambrose*.

True it is indeed, that in the heat of zeal by good men in the Primitive times, Virginity was buoyed up at a great rate, in pursuit of which, many holy church customs became neglected; and in an heat were decryed. And here *Priests marriage* began to be in disgrace, and at length was utterly thrust out. And hence Concubinage also was spoken against. But this Respondent has not read of any process against Concubinage as a criminal thing, until the *Papacy* of *Rome* being crowned heads, and become rampant, began to tyrannize at list. And the first that this Respondent found upon record, was the case of *Lotharius* King of North *France*, who having a Wife, kept a Concubine, in the IXth Century, and was first admonished and then excommunicated by the Pope *Hadrian II.* unto the ruin of that poor Prince. And since this beginning, the proud Popes have made *decrees* and *Canons* as best served their own avarice, even as they listed; and darkened the brightness of the holy Gospel out of all mens sight in a manner; insomuch, as in the days of *Henry VIII.* the King, Lords and Commons assembled in Parliament, unanimously complain'd of the Popish encroachments in the case of marriage, brought in for filthy lucre sake, which the church-men reapt thereby; by means whereof so many ways were invented for bastardizing of Children, that without a license of marriage from *Rome*, it was a difficult thing for a person of any quality to have a lawful born Heir. Whence in the XXXII. year of *Henry VIII.* Chap. 38. a Statute past, that all marriages shall be lawful which are not in holy Writ forbidden: And in that statute, the *Bedding of a woman* was stiled the Essence or Consummation of marriages. See we then whence come up this custom of making base born children contrary to God's Word; not out of holy Writ, nor lawful Church Canons, but out of the dregs and corrupt laws of the worst of Popish times. And yet since that statute, we are not yet come to rights, nor cleared enough of those old popish corruptions.

And this Respondent humbly conceives with submission to the most pious and learned statesmen of those Realms, that were matters well vveigh'd, the doctrine of a Reformed Concubinage as it was used of old by the holy and good Patriarchs, might be found to be of sacred and holy use, to prevent the ruin of Royal, Noble, and Generous Families, many of which have formerly shipwrackt for want of a convenient remedy; and besides it would prove an honest help to destroy those foul and crying sins of *Whoredom* and *Adultery*, which ruin Kingdoms as well

as Families. Had it not been for this help of Concubinage, King Solomon had utterly failed of that Royal Race, whence our Lord and blessed Saviour *Jesus Christ* lineally descended. Consider we how many Kingdoms have been utterly ruined for want of an honest Concubinage to supply the defects of barren and unhappy marriages. Had *Alexander Scot* used a Concubine, an heir of his body might have prevented those dreadful Wars which followed between the Families of *Bruce* and *Bayliol*, for compassing that Crown. And had *Richard the II.* of *England* been allowed an Heir by a Concubine, the Wars of *York* and *Lancaster* had never harrassed this Kingdom as they did; which at last was not ended but by a son sprung from a bed of Concubinage: But happy was that Concubinage of *Robert the II.* of *Scotland*, which advised to by a Parliament of that nation, gave birth to that Family of the *Stuarts*, which have made *England* and *Scotland* exceeding happy. And being grafted into the family of the *Welch Teuthers* of the royal blood of *England*, another family sprung from the bed of Concubinage, are to this day reigning over both kindoms. Which if so, let no man by corrupt and unlavvful customs go about to stain the Legitimacy of such a race of princes as both *England* and *Scotland* have just cause to remember with praise and thanksgiving to God, and especially for *Charles the first* of blessed and never dying Memory, the gracious gift of God, for whose blessed sake good things may justly be expected in time, both unto his royal race and these his kindoms. And thus much may serve in vindication of this Respondent, or bedding with *Mary Tomkins*, and in answer to her II. Article. The third saith.

III. Item. That the said *John Butler* after having lived with the said *Mary Tomkins* in the foul crime of Adultery, or Incontinency, in *Holland*, or some other part beyond the Seas, as in the present Article is set forth, he the said *John Butler* with the said *Mary Tomkins*, returned into *England*, and bought or took a house at *Hammer-smith*, in the county of *Mid.* where they continued to live in an Adulterous and Incontinent manner for many years together, and do still live and cohabit together as man and wife, and for the said *Mary* hath had four other base children born of her body, and begotten by the said *John Butler*, one of which children is since dead, but the other three are still living, and are called by the Name of *John*, *George* and *Butler*, and for and as the Natural children of the said *Mary Tomkins*, begotten by the said *John Butler*, they were and are commonly accounted reputed and taken, and thereof as also the said *John Butler* and *Mary Tomkins* their living in Adulterous and Incontinent manner together in *Hammer-smith* aforesaid, there was and is a notorious publick and
de

ponit tamen de quolibet alio temporis spatio & numero liberorum
& ponit ut supra.

Such is the third Article of her Libel, which is forestalled by
by the Answer to the second, saving that this respondent saith,
he hath lived some time in *Hamwershsmith*, in good reputation
with all good People in the Parish; who he supposes cannot give
credit to the lies and scandals of this Article, and that the said
Mary Tomkins doth cohabit with him there in good reputation,
by the name of *Butler*.

IV. Item. *That the said John Butler hath lately, to wit, within
last past turned the said Martha Butler his Wife out of
doors, and left her destitute of necessaries whereby to support and
maintain her self. Hocq; fuit & est verum, &c. & ponit ut supra.*

Such is her IV Article; unto which this Respondent saith, it is
a meer forgery of lies, he having no such Wife as *Martha Butler*;
one he had such a Woman his Wife, whom he never turn'd out of
doors; but she lived with him while she would, and left him of her
self, but lived upon his estate, eat and drank at his charge, and lived
upon his means, and does so to this day, and was never denied sup-
port and maintenance, would she come where 'tis to be had.

V. Item. *That the said John Butler hath an estate to the value
of 200 l. or at least 185 l. per ann. Hocque, &c. ponit tamen, &c.
ponit ut supra.*

To which this Respondent answers, that once he had such an
estate, but by the evil dealings of the said Complainant *Martha*
and her Sons, by confederacy with *Nathaniel Halbed* the Mort-
gagee, he is deprived at present of his whole estate by illegal and
evil arts, and this Complainant and her sons are in possession
thereof.

VI. Item. *Quod præfat. Johannes Butler fuit & est paroch. de
HammerSmith in Com. Midd. ac ratione literarum requisi-
toria, ab Ordinario loci prius obtent. jurisdict. hujus curiæ
Notor. subditus & subject, & ponit ut supra.*

Hic Respondes de his nil intelligit.

VII. Item. *Quod de & super premissis, &c.*

Item. *Quod præmissa, &c.*

Negat Respondens.

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